

E.—Right to Decayed Leaves from the ground.

We have no special term to indicate this right. In German it is a right to "*Waldstreu*" (*streunutzung*). In French it is called "*Droit de soustrage*"⁵.

The right occupies a prominent place in the German text-books, but in Meaume and other French works, it is scarcely alluded to. The right is, however, found in French forests. By the ordinary law, the removal of dead leaves is, in the absence of a right, an offence, and is so declared in Art. 144 of the Code Forestier. Where there is a right, it is to be remembered that the exercise is subject to the same restrictions as any other right. It can never be exercised except on the usual condition of a previous "*délivrance*," i.e., that the Forest Officer should assign and precisely indicate the place where the right can alone be exercised. In the same way it is a general rule that rights can only be exercised "*suivant l'état et la possibilité des forêts*," so that the Forest Officer will not give a direction for the exercise of the right in any part of the forest in which there is danger to the soil or the forest growth. In this way all the principles, which are fully set out in the German text books, can be legally applied, and probably would be in all forests where it was necessary.

The German text books sometimes include under the term "*streunutzung*," not only the collection of dead leaves, but also the removal of moss and even herbage such as heather and broom (*genista*)⁶.

In India, however, the right that we have to deal with consists in taking up not only the freshly-fallen dead leaves, but also those

⁵ In Gerschel's Vocabulary of French and German terms (for use at Nancy), no French equivalent is given: *droit de fane* means only scraping up dead and decayed leaves: whereas *streunutzung* is often employed to indicate the collection of moss, litter, &c., as well: *Soustrage* means anything spread out on the surface, and is applied often to cutting broom, heather, moss, furze and undergrowth, but also to taking dead leaves.

⁶ For example, Hartig, as quoted by Rönne, p. 721; and see Austrian Law of 1852, § 12.

decayed and turning into humus. It is chiefly, as far as I am aware, exercised in deodar and other coniferous forests.

§ 29.—*Destructiveness of the right.*

It is needless to remark that such a right is one of the most destructive of all rights.

“An excessive removal,” says Grabner⁷, “carried on for a series of years, must result in deterioration of the soil, lessening of the wood-production (leading to the growth of poor, stunted and slow-growing trees), and at last causing distorted growth, diseases, and even the dying-off of whole groups of trees, till with the disappearance of the trees the right itself perishes. If the right is a matter of urgent necessity to the right-holder, he is thus placed in a critical position.” To this I may add that the exercise of such a right exposes the roots of trees to the action of frost; it dries the soil and makes it less retentive of moisture; exposes it to the action of weather and hinders the process by which the raw mineral material of the upper subsoil is dissolved and made fit for absorption by the root-fibres to nourish the tree.

In scraping up the surface also, innumerable seeds just sprouting, are taken up, and when a new supply of seed falls, the ground is hard, and there is no *nidus* for the germination to take place in⁸.

Unfortunately, however, the right is often very much wanted, especially in countries like Kulu in the Himalaya, where other manure is almost unprocurable. It may then be necessary to allow its exercise, but in all cases under the strictest regulation: for it must be borne in mind that if unregulated there is no right

⁷ Page 263.

⁸ See Hartig, quoted by Rönne at p. 721. A forest, he says, may barely survive but can never yield as much as it would if the right did not exist: it is therefore worth the forest-owner's while to make great sacrifices in order to get rid of the right. Eding (p. 132) says: “This is the worst of all forest rights” (*schädlichsten von allen old servituten*; so Pfeil, § 13, p. 51; but the authorities are endless. There is a little treatise by Karl Fischbach (*Die Beseitigung der waldstreunutzung*, &c., Frankfurt, A. M. 1864) devoted to a study of this right. In this may be seen the calculations made by Hundeshagen and others of the effects of removing certain weights of the “streu,” on the forest yield.

which will more surely put an end to the forest altogether in the course of some years.

In places where the forest area is split up into small blocks separated by private lands, it will be convenient to assign some of them for the supply of dead leaves; but even then the same block cannot be continuously worked.

§ 30.—*Principles of regulation.—When the right must be excluded.*

The following principles of regulation with regard to this right are supported by an entire consensus of German authorities.

In the first place the right cannot be exercised—

- (1) on very steep slopes;
- (2) in parts of the forest where the soil is stony and poor;
- (3) in parts of the forest subjected to processes of regeneration and restoration;
- (4) in parts of the forest to be cut down in the next four years or so;
- (5) in parts under young growth.

As regards this last, the law of some German States prescribes that the right cannot be exercised until the forest is 60 years old for high forest, and 15 years for coppice⁹.

The law in Baden (of which, von Berg says, the terms are too short) fixes 40 years for deciduous high forest, 30 years for pines, 15 years for hard wood coppice and 12 years for soft wood¹⁰.

⁹ In Prussia, apparently, no fixed age is given; professional opinion is to determine whether any given portion of a forest is fit or not to bear the exercise. Power is reserved to the right-holder to obtain a legal settlement, if he thinks the forest-owner does not open a sufficient area. (See Eding, p. 103.)

¹⁰ The authorities are all concurrent on the subject of those restrictions which are universally applicable. (See Rönne, quoting Hartig, pp. 721-46; von Berg, p. 231; the Austrian Forstgesetz, §§ 11-14.) Art. 13 of the last quoted provides that lopping of trees and collecting dead leaves can never go on together on the same area. The Prussian special law of 5th March 1843 is fully described by Eding (p. 102, &c.). This law requires tickets to be issued, which must be produced whenever the right is exercised. The ticket specifies the amount of "streu" which may be taken, and the means by which it is to be carried away. The law also contains some excellent provisions for punishing wilful contraventions of the rules.

§ 31.—*Where the right is admitted.*

The parts of the forest that, not coming under the above exceptions, are open to the right, must be divided into blocks, so that the right is exercised in rotation and never continuously on one spot.

The division may conveniently be into four blocks, each to be worked for one year.

In the block open to working it is necessary to make the following provisions:—

- (1) The season must be fixed. In Germany, it is from the 1st October to 1st April, because the dead leaves are then thicker on the ground, and there is the least risk of the soil itself being scraped up. In India local circumstances must be looked to.
- (2) During the season the collection should be allowed on certain days in the week, and so be done *under the supervision* at least of the forest guards.
- (3) The surface only must be taken, and black soil underneath must not be removed¹.

In Germany also, the *quantity* of stuff to be taken is fixed. In India this may be difficult, but it is of great importance and should be attempted, however roughly. I see no difficulty in making a beginning by settling that so many “kiltas” full (the Himalayan basket) or other such locally-known measure can be taken, and no more.

The plan of tickets or “permits” can also be followed: on this the season, the part of the forest, the days in the week and the number of basketfuls should be entered.

Lastly, in some places it may be found possible to make plantations with the express object of supplying this right and so relieving the rest of the forest.

¹ In Germany, this is secured by allowing only wooden rakes (not iron ones) with thick teeth, to be used. The Prussian law requires that the teeth should be at least 2½-inches apart.